

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 195 Juvenile Diversion Program Expunction

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee

**TIED BILLS:** HB 197 **IDEN./SIM. BILLS:** CS/SB 342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice & Public Safety Subcommittee		Frost	Hall

### SUMMARY ANALYSIS

Generally, when a law enforcement officer has probable cause to believe that a juvenile has committed a criminal offense, the officer may take the juvenile into custody or issue a notice to appear. Both taking a juvenile into custody and issuing a notice to appear refers the matter to the clerk of court, where a juvenile delinquency case is generated. The creation of that case becomes part of the juvenile's offender record.

Diversion is a program designed to divert a juvenile from entering the juvenile justice system by placing him or her on a less restrictive track providing more opportunities for rehabilitation and restoration. The goal of diversion is to maximize the opportunity for success and minimize the likelihood of recidivism. Upon successful completion of a diversion program, the juvenile's charges are dismissed. Section 943.0582, F.S., requires the Department of Law Enforcement (FDLE), upon receiving an application signed by a juvenile and certified by the state attorney, to expunge any nonjudicial arrest record of a juvenile who successfully completes a diversion program for a misdemeanor offense and who otherwise meets eligibility criteria.

Under s. 985.126, F.S., a juvenile whose nonjudicial arrest record is expunged may lawfully deny or fail to acknowledge his or her participation in a diversion program for a first-time misdemeanor and the expunction of the record, unless the inquiry is made by a criminal justice agency for the purpose of:

- Determining eligibility for other diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.

PCS for HB 195 requires FDLE to expunge a juvenile's nonjudicial arrest record following his or her successful completion of a diversion program for any offense that is not a forcible felony or any felony involving the manufacture, sale, purchase, transport, possession, or use of a firearm or weapon, rather than only a misdemeanor. A juvenile seeking to have his or her nonjudicial arrest record expunged must still submit certification from the state attorney that he or she meets the qualifications for expunction. The decision to refer a juvenile to a diversion program remains at the discretion of either the law enforcement officer who interacts with the juvenile at the time of the offense or the state attorney assigned to the case. A child who is excluded from eligibility for a diversion expunction may still qualify for court-ordered expunction or sealing, if he or she is otherwise eligible for such sealing or expunction.

Under the bill, a juvenile who successfully completes a diversion program for a qualifying offense, rather than only a first-time misdemeanor, and who is granted an expunction, may lawfully deny or fail to acknowledge his or her participation in a diversion program and the expunction of a nonjudicial arrest record, except when the inquiry is made by a criminal justice agency for specified purposes.

The bill may have an indeterminate negative fiscal impact on state government due to required computer system modifications and additional workload generated for FDLE by increasing the number of applicants eligible for juvenile diversion expunction.

The bill provides an effective date of July 1, 2022.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Creation and Disposition of a Juvenile Case

Generally, when a law enforcement officer has probable cause to believe that a juvenile has committed a criminal offense in Florida, the officer may take the juvenile into custody or issue a notice to appear.<sup>1</sup> Both taking a juvenile into custody and issuing a notice to appear refers the matter to the clerk of court, where a juvenile delinquency case is generated.

A juvenile delinquency case may be resolved in any of the following ways:

- The case may be dismissed by a:
  - No action or no information;<sup>2</sup>
  - *Nolle prosequi*;<sup>3</sup> or
  - Court dismissal.<sup>4</sup>
- The juvenile may participate in pretrial diversion.<sup>5</sup>
- The juvenile may plead guilty or no contest to the charges.<sup>6</sup>
- The case may proceed to an adjudicatory hearing, at which the court may:
  - Adjudicate the juvenile delinquent;
  - Withhold adjudication of delinquency;<sup>7</sup> or
  - Dismiss the case.

##### Juvenile Offender Records

In contrast to an adult criminal history record,<sup>8</sup> which is generally accessible to the public, a juvenile offender record in the jurisdiction of a juvenile court is confidential and exempt from public disclosure.<sup>9</sup>

As such, a juvenile's offender record may only be disclosed to:

- Authorized court personnel;
- The Department of Juvenile Justice (DJJ) and its designees;
- The Department of Corrections;
- The Florida Commission on Offender Review;
- Law enforcement agents;
- School superintendents and their designees;
- Any licensed professional or licensed community agency representative assessing or treating a juvenile; or
- Any person authorized under ch. 985, F.S., to receive such information, or upon court order.<sup>10</sup>

<sup>1</sup> A notice to appear is a written order issued by a law enforcement officer, in lieu of taking a juvenile into custody or detaining the juvenile, to appear in a designated court or governmental office at a specified date and time. Fla. R. Juv. P. 8.045.

<sup>2</sup> A "no action" is a dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

<sup>3</sup> A *nolle prosequi* is the dismissal of a pending information or indictment. *Id.*

<sup>4</sup> The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Fla. R. Juv. P. 8.085(a)(4), upon expiration of the speedy trial period under Fla. R. Juv. P. 8.090(d), or upon granting Stand Your Ground immunity under s. 776.032, F.S.

<sup>5</sup> S. 985.12, F.S.

<sup>6</sup> Fla. R. Juv. P. 8.070(b).

<sup>7</sup> A withhold of adjudication allows a court to impose a sentence without imposing an adjudication of delinquency and the collateral consequences that accompany that adjudication. George E. Tragos and Peter A. Sartes, *Withhold of Adjudication: What Everyone Needs to Know*, Florida Bar Journal (Feb. 2008), <https://www.floridabar.org/the-florida-bar-journal/withhold-of-adjudication-what-everyone-needs-to-know/> (last visited Jan. 10, 2021). Fla. R. Juv. P. 8.110(g).

<sup>8</sup> "Criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information. S. 943.045(6), F.S.

<sup>9</sup> S. 985.04(1)(a), F.S.

<sup>10</sup> S. 985.04(1)(b), F.S.

Notwithstanding the confidential and exempt status of juvenile offender records:

- A juvenile's name, photograph, address, and crime or arrest report is not considered confidential and exempt if he or she is:
  - Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
  - Charged with a violation of law which, if committed by an adult, would be a felony;
  - Found to have committed an offense which, if committed by an adult, would be a felony; or
  - Transferred to adult court under part X of ch. 985, F.S.;<sup>11</sup>
- A law enforcement agency may release a copy of a juvenile offense report to the victim of the offense;<sup>12</sup>
- A law enforcement agency must notify the superintendent of schools that a juvenile is alleged to have committed a delinquent act when he or she is taken into custody for an offense that would have been a felony if committed by an adult, or a crime of violence;<sup>13</sup>
- Records maintained by DJJ, including copies of court records pertaining to a juvenile found to have committed a delinquent act which, if committed by an adult, would be a disqualifying crime in a level two background screening,<sup>14</sup> may not be destroyed for 25 years after the juvenile's final referral to DJJ, except upon a juvenile's death;<sup>15</sup> and
- Records in DJJ's custody may be inspected upon order of the Secretary or his or her authorized agent by persons with sufficient reason and under such conditions as the Secretary or his or her authorized agent deems proper.

Records pertaining to juveniles committed to or supervised by DJJ are retained until a juvenile reaches a certain age, depending on the type and severity of the offense.<sup>16</sup>

## Juvenile Diversion Expunction

### *Diversion Programs*

Diversion is a program designed to divert a juvenile from entering the juvenile justice system by placing him or her on a less restrictive track that affords more opportunities for rehabilitation and restoration.<sup>17</sup> The goal of diversion is to maximize the opportunity for success and minimize the likelihood of recidivism.<sup>18</sup>

A juvenile may have the opportunity to participate in either a prearrest or postarrest diversion program. A prearrest diversion program is an intervention program that holds a juvenile accountable for his or her behavior, while avoiding a court proceeding or formal arrest record.<sup>19</sup> A postarrest diversion program is a similar intervention program, but diverts a juvenile from further court proceedings after an arrest.<sup>20</sup>

---

<sup>11</sup> S. 985.04(2)(a)1., F.S.

<sup>12</sup> Information gained by the victim pursuant to ch. 985, F.S., including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies. S. 985.04(3), F.S.

<sup>13</sup> When a juvenile is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile's school that he or she has been charged with such felony or delinquent act. The information obtained by the superintendent of schools must be released within 48 hours after receipt to appropriate school personnel, including the principal of the juvenile's school and the director of transportation. The principal must immediately notify the juvenile's classroom teachers, assigned bus driver, and any other school personnel whose duties include directly supervising the juvenile. S. 985.04(4)(b), F.S.

<sup>14</sup> S. 435.04, F.S.

<sup>15</sup> S. 985.04(6)(a), F.S.

<sup>16</sup> See ss. 943.0515(2) and 985.04(7), F.S.

<sup>17</sup> Florida Department of Juvenile Justice, *Glossary*, <http://www.djj.state.fl.us/youth-families/glossary> (last visited Jan. 10, 2021).

<sup>18</sup> Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013),

[http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report\\_web.pdf](http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf) (last visited Jan. 10, 2021).

<sup>19</sup> Mark A. Greenwald, *Overview of Florida's Pre-Arrest and Post-Arrest Juvenile Diversion Programs and Applicable Laws*, Florida Department of Juvenile Justice (June 7, 2018), <http://www.fdle.state.fl.us/MSDHS/Meetings/June-Meeting-Documents/Presentations/June-7-930AM-DJJ-Greenwald-Diversion-Programs.aspx> (last visited Jan. 10, 2021).

<sup>20</sup> *Id.*

While prearrest diversion diverts a juvenile before an arrest record is ever created, in postarrest diversion, an arrest record is created and maintained pending the juvenile's participation in and completion of the diversion program. Upon successfully completing a postarrest diversion program, a juvenile's charges are dismissed.

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer who interacts with the juvenile at the time the offense is committed or the state attorney who is assigned the case. Examples of such programs are Community Arbitration, Juvenile Alternative Services Program, Teen Court, Intensive Delinquency Diversion Services, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools.<sup>21</sup>

### *Expunction*

Generally, expunction is the court-ordered physical destruction or obliteration of a criminal history record or portion of a record by any criminal justice agency having custody of the record.<sup>22</sup> A juvenile who completes one of the following diversion programs may petition for juvenile diversion expunction:<sup>23</sup>

- Civil citation or a similar prearrest diversion program;<sup>24</sup>
- Prearrest or postarrest diversion program;<sup>25</sup>
- Neighborhood restorative justice;<sup>26</sup>
- Community arbitration;<sup>27</sup> or
- A program to which a state attorney refers the juvenile.<sup>28</sup>

FDLE is required to expunge a juvenile's nonjudicial arrest record after he or she successfully completes a diversion program, if the juvenile:

- Submits an application for prearrest or postarrest diversion expunction;
- Participated in a diversion program based on the commission of a misdemeanor;
- Has never been, before filing the application, charged with or found to have committed any other criminal offense or comparable ordinance violation;
- Participated in a diversion program that expressly allows for such expunction; and
- Submits certification from the state attorney for the county in which the arrest occurred certifying that he or she:
  - Successfully completed that county's diversion program;
  - That his or her participation in the program was based on an arrest for a misdemeanor; and
  - That he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.<sup>29</sup>

Juvenile diversion expunction has the same effect as court-ordered expunction of criminal history records under s. 943.0585, F.S., except that:

- FDLE must make an expunged juvenile diversion criminal record available only to criminal justice agencies for the purpose of:

<sup>21</sup> Florida Department of Juvenile Justice, *Probation & Community Intervention*, <http://www.djj.state.fl.us/services/probation> (last visited Jan. 10, 2021).

<sup>22</sup> Criminal history records in FDLE's custody must be retained in all cases for purposes of evaluating subsequent requests by the same person for sealing or expunction or for purposes of recreating the record if a court vacates an order to expunge. S. 943.045(16), F.S.

<sup>23</sup> S. 943.0582, F.S.

<sup>24</sup> The civil citation program offers early intervention, community counseling referrals, and other appropriate community resources to divert juvenile misdemeanor offenders from the Juvenile Justice System. The program works with other community partners in an effort to reduce juvenile crime and to provide services for at-risk youth. Nineteenth Judicial Circuit, *Civil Citation* (2019), <http://www.circuit19.org/programs-services/court-programs/juvenile/civil-citation> (last visited Jan. 10, 2021). S. 985.12, F.S.

<sup>25</sup> S. 985.125, F.S.

<sup>26</sup> In neighborhood restorative justice programs, victims, the offender, and all others impacted by the crime discuss the impact, obligations, and actions needed to repair harm. Florida Restorative Justice Association, *Retributive Justice vs. Restorative Justice* (2014), <https://www.floridarestorativejustice.com/about-rj.html> (last visited Jan. 10, 2021). S. 985.155, F.S.

<sup>27</sup> Community arbitration is a program where a juvenile who has committed a relatively minor offense can have his or her case resolved in an informal manner, and appear before a community arbitrator instead of a judge in juvenile court. Twentieth Judicial Circuit, *Juvenile Arbitration Program* (2014), <https://www.ca.cjis20.org/home/main/juvarb.asp> (last visited Jan. 10, 2021). S. 985.16, F.S.

<sup>28</sup> S. 985.15, F.S. See s. 943.0582(2)(a), F.S.

<sup>29</sup> S. 943.0582(3), F.S.

- Determining eligibility for diversion programs;
  - A criminal investigation; or
  - Making a prosecutorial decision under s. 985.15, F.S.<sup>30, 31</sup>
- Local criminal justice agencies in the county in which an arrest occurred must seal instead of destroy any relevant records.<sup>32</sup>

A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record, unless the inquiry is made by a criminal justice agency<sup>33</sup> for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.<sup>34</sup>

As of January 2021, there were 26,903 minors with 64,343 juvenile felony arrest charges with or without a disposition which may qualify for juvenile diversion expunction.<sup>35</sup> Between January 2018 and September 2021, FDLE's Seal and Expunge section received 566 juvenile diversion expunction applications.<sup>36</sup>

A juvenile who is granted an expunction or sealing of his or her criminal record based on successful completion of a juvenile diversion program is still eligible to petition for court-ordered expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the minor is otherwise eligible under those sections.<sup>37</sup> Furthermore, a juvenile who is not eligible for juvenile diversion expunction or sealing may still qualify for court-ordered expunction or sealing of his or her criminal record, if he or she is otherwise eligible for such sealing or expunction.

### Forcible Felonies

Under s. 776.08, F.S., forcible felonies include:

- Treason;
- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Arson;
- Kidnapping;
- Aggravated assault;
- Aggravated battery;
- Aggravated stalking;
- Aircraft piracy;

<sup>30</sup> S. 943.0582(2)(b)1., F.S.

<sup>31</sup> S. 985.15, F.S., provides that in all juvenile delinquency cases, the state attorney shall determine how to proceed with a case, based on the best interest of the public and the child, including determining whether to charge the child as an adult under s. 985.556, F.S., or to otherwise dispose of the case by: filing a petition for dependency; filing a petition under ch. 984, F.S.; filing a petition for delinquency; filing a petition for delinquency with a motion to transfer and certify the child for prosecution as an adult; filing an information under s. 985.557, F.S.; referring the case to a grand jury; referring the child to a diversionary or other program or to some other treatment or care program if voluntarily accepted by the child or the child's parents or legal guardian; or declining to file.

<sup>32</sup> S. 943.0582(2)(b)2., F.S.

<sup>33</sup> "Criminal justice agency" means a court; FDLE; DJJ; the protective investigations component of the Department of Children and Families, investigating abuse or neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. S. 943.045(11), F.S.

<sup>34</sup> Ss. 985.126(5) and 943.0582(2)(b)1.a.-c., F.S.

<sup>35</sup> Florida Department of Law Enforcement, Agency Analysis of 2022 House Bill 195, p. 3 (July 1, 2022).

<sup>36</sup> *Id.* at p. 2.

<sup>37</sup> S. 943.0582(4), F.S.

- Unlawful throwing, placing, or discharging of a destructive device or bomb; and
- Any other felony which involves the use or threat of physical force or violence against any individual.

## Firearm and Weapon Offenses

Section 790.001, F.S., defines “firearm” and “weapon,” as follows:

- “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device;<sup>38</sup> or any machine gun. The term “firearm” does not include an antique firearm<sup>39</sup> unless the antique firearm is used in the commission of a crime.
- “Weapon” means any dirk, knife, metallic knuckles, slungshot,<sup>40</sup> billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

According to the Florida Uniform Crime Reports (Florida UCR), in 2018, there were a total of 6,624 arrests for weapons violations<sup>41</sup> reported to the Florida UCR program, and of those arrests, 800 were juvenile arrests.

## **Effect of Proposed Changes**

PCS for HB 195 amends s. 943.0582, F.S., to authorize a juvenile to seek, and require FDLE to grant, an expunction of a nonjudicial arrest record when he or she successfully completes a diversion program for any offense other than a forcible felony or a felony involving the manufacture, sale, purchase, transport, possession, or use of a firearm or weapon, as those terms are defined in s. 790.001, F.S. A child who is excluded from eligibility for juvenile diversion expunction may still qualify for court-ordered expunction or sealing, if he or she is otherwise eligible for such expunction or sealing.

A juvenile seeking to have his or her nonjudicial arrest record expunged after successfully completing a diversion program must still submit certification from the state attorney that he or she meets the qualifications for expunction, including having never been, before filing the application, charged with or found to have committed any other criminal offense or comparable ordinance violation. The decision to refer a juvenile to a diversion program remains at the discretion of either the law enforcement officer who interacts with the juvenile at the time of the offense or the state attorney who is assigned the case.

The bill also amends s. 985.126, F.S., to authorize a juvenile to lawfully deny or fail to acknowledge his or her participation in a diversion program and the expunction of a nonjudicial arrest record when such

<sup>38</sup> “Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. “Destructive device” does not include: a device which is not designed, redesigned, used, or intended for use as a weapon; any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; any shotgun other than a short-barreled shotgun; or any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game. S. 790.001(4), F.S.

<sup>39</sup> “Antique firearm” means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1918, and also any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade. S. 790.001(1), F.S.

<sup>40</sup> “Slungshot” means a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon. S. 790.001(12), F.S.

<sup>41</sup> The Florida UCR program defines weapons violations as violations of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons. Florida Department of Law Enforcement, *Crime Data, Weapons Violations*, <https://www.fdle.state.fl.us/FSAC/Crime-Data/Weapons-Violations> (last visited Jan. 10, 2021).

record is expunged pursuant to s. 943.0582, F.S., except when the inquiry is made by a criminal justice agency for the purpose of: determining eligibility for other diversion programs; a criminal investigation; or making a prosecutorial decision under s. 985.15, F.S. Current law only authorizes a juvenile to deny or fail to acknowledge participation in a diversion program and an expunction for a first-time misdemeanor.

The bill provides an effective date of July 1, 2022.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 943.0582, F.S., relating to diversion program expunction.

**Section 2:** Amends s. 985.126, F.S., relating to diversion programs; data collection; denial of participation or expunged record.

**Section 3:** Provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

None.

**2. Expenditures:**

There is no charge to an applicant for a juvenile diversion program expunction application; therefore, the bill will likely have an indeterminate negative fiscal impact on FDLE due to costs associated with processing an increased number of applications which may result from additional nonjudicial arrest records being eligible for juvenile diversion expunction.<sup>42</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

---

<sup>42</sup> *Supra*, note 34.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

FDLE requests two additional FTE positions and \$142,011 in budget authority to address the additional workload associated with processing an increased number of applications which may result from additional nonjudicial arrest records being eligible for juvenile diversion expunction under the bill. Additionally, FDLE reports it will need to make programmatic modifications to the Computerized Criminal History (CCH) system, with an estimated cost of \$24,050.<sup>43</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

---

<sup>43</sup> *Supra*, note 34.